

**United States Department of Labor
Employees' Compensation Appeals Board**

K.V., Appellant, widow of K.V.

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kansas City, MO, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 16-1610
Issued: July 3, 2017**

Appearances:

Daniel M. Goodkin, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On August 4, 2016 appellant, through counsel, filed a timely appeal from a July 6, 2016 merit decision and July 22, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that the employee's death on November 24, 2013 was causally related to factors of his federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 4, 2014 appellant, widow of the deceased employee, filed a claim for compensation by widow, widower, and/or children (Form CA-5) claiming entitlement to survivor benefits. Regarding the nature of the injury which caused death, she alleged that the employee's federal job duties caused an acute myocardial infarction, which in turn caused his death on November 24, 2013.³

At the time of his death, the employee was a 53-year-old city carrier. On October 7, 2013 the employee had filed an occupational disease claim (Form CA-2), under OWCP File No. xxxxxx001, claiming that he sustained occupational diseases of his back, shoulders, and elbows due to performing his repetitive work duties over time. He indicated that he first became aware of his claimed conditions on April 10, 1999 and first realized on an unspecified date in 1999 that they were caused or aggravated by his employment. The employee did not stop work around the time he filed his occupational disease claim and appellant indicated that he had worked in his job on the day prior to his November 24, 2013 death.⁴ OWCP did not render a final decision on the employee's occupational disease claim prior to his death. After appellant filed her claim for survivor benefits, it doubled the file for this claim into the file for her claim for survivor benefits. In connection with OWCP File No. xxxxxx001, the employee had submitted several statements from 2012 and 2013 in which he discussed the pain caused by his duties that required lifting, twisting, and extending his arms. Additionally, an April 26, 2012 echocardiogram showed ventricular dysfunction.

Appellant submitted a death certificate completed on November 27, 2013 by Dr. Kenny Morohunfola, an attending Board-certified internist. Dr. Morohunfola listed the immediate causes of death as acute myocardial infarction, coronary artery disease, and hypercholesterolemia. He also listed hypertension and congestive heart failure as contributing conditions.

In a July 7, 2014 report, Dr. Morohunfola indicated that the employee became his patient around 1999 when he complained of back pain due to his work duties including lifting heavy loads, repetitive use of the upper extremities, twisting, climbing, and engaging in prolonged standing and walking. The employee also reported pain in his shoulders, elbows, and heels. Dr. Morohunfola noted that, on several occasions between 2008 and 2011, he recommended that the employee not work more than 8 hours per day or 40 hours per week, walk more than 100 yards, lift more than 30 pounds intermittently, or engage in delivering mail.⁵ He posited that the employee's repetitive work duties caused a permanent aggravation of his back and shoulder conditions. Dr. Morohunfola noted that the conditions he diagnosed while the employee was under his care were degenerative joint disease of the back and shoulders, bulging discs, left

³ Appellant indicated that she married the employee on August 4, 1979 and was married to him and living with him on the date of his death. She submitted a copy of their marriage license.

⁴ Appellant submitted an October 22, 2014 letter in which she described the employee's activities and symptoms in the week prior to his death on November 24, 2013. She indicated that he reported that his job was very stressful and that he complained of increased back, neck, and upper extremity pain in the week before his death.(RD 11-3-14)

⁵ Dr. Morohunfola also recommended that the employee be allowed to sit on a stool while working.

sciatica, rotator cuff syndrome, and bilateral plantar fasciitis. He indicated that, in early 2012, the employee developed shortness of breath and was diagnosed with congestive heart failure and cardiomyopathy.⁶ Dr. Morohunfolo indicated, “For these reasons, it is my medical opinion that the strenuous nature of [the employee’s] postal duties contributed to the worsening of his cardiac symptoms, his eventual acute heart attack and resultant death in November, 2013.”

In an October 10, 2014 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a medical report from a treating physician providing an opinion, with medical reasons, on the direct cause of the employee’s death. On October 10, 2014 it also requested that the employing establishment submit additional information.

Appellant submitted medical evidence that was originally submitted in connection with the employee’s occupational disease claim. In October 4 and November 22, 2013 reports, Dr. Morohunfolo noted that the employee had developed shortness of breath with moderate exertion several months prior and had been diagnosed with congestive heart failure and cardiomyopathy. Appellant also submitted other reports, dated between June 6 and November 19, 2014, in which Dr. Morohunfolo discussed the employee’s back pain.

The employing establishment advised OWCP that the employee had died while he was at church on November 24, 2013.

In a January 14, 2015 decision, OWCP denied appellant’s claim for survivor benefits finding that she had not established that the employee’s death on November 24, 2013 was causally related to factors of his federal employment. It noted that she had not established the factual aspect of her claim, *i.e.*, she had not adequately identified the employment factors alleged to have contributed to a medical condition causing the employee’s death on November 24, 2013. OWCP also noted that the medical evidence of record, including the reports of Dr. Morohunfolo, did not contain a rationalized medical opinion explaining how employment factors contributed to the employee’s worsening cardiac condition, acute myocardial infarction, and resultant death on November 24, 2013.

On January 13, 2016 counsel requested reconsideration of the January 14, 2015 decision denying survivor benefits. He indicated that he was enclosing medical reports of Dr. Alec D. Weisberg, an attending Board-certified cardiologist who treated the employee’s heart problems, and a statement from appellant clarifying the circumstances of the employee’s death.

In a May 8, 2012 report, Dr. Weisberg diagnosed the employee with cardiomyopathy, congestive heart failure, hypertension, hyperlipidemia, chronic kidney disease, and obesity. On June 12, 2012 he provided the additional diagnosed conditions of probable obstructive sleep apnea, asthma, and gastro-esophageal reflux disease (GERD). In an October 1, 2012 report, Dr. Weisberg provided findings that were similar to those contained in his earlier reports.

⁶ Dr. Morohunfolo noted that, after the diagnosis of congestive heart failure, he wrote additional letters on the employee’s behalf recommending the same special accommodations he previously recommended. He indicated that the employee returned to the clinic on several occasions and reported that his work schedule remained very rigorous.

In a January 13, 2016 statement, appellant reported that the employee died at home on November 24, 2013. She explained that he died at approximately 5:30 a.m. while getting ready for church, where he served as a pastor.

The employing establishment submitted a city carrier position description. The position involved delivering and collecting mail on foot or by vehicle, and routing, casing, and sorting mail. Additionally, the city carrier position required lifting/carrying 10 to 35 pounds up to 8 hours a day, intermittently lifting up to 70 pounds for 8 hours a day, standing 8 hours a day, walking 5 to 8 hours a day, climbing stairs intermittently 5 to 6 hours a day, bending and stooping intermittently 5 to 6 hours a day, twisting intermittently up to 8 hours a day, pulling and pushing intermittently 1 to 2 hours a day, simple grasping and fine manipulation continuously up to 8 hours a day, and reaching above shoulder height intermittently 2 to 3 hours per day.

In an April 11, 2016 decision, OWCP denied appellant's claim for survivor benefits. It modified its January 14, 2015 decision to reflect that she had established employment factors experienced by the employee, including delivering and collecting mail on foot or by vehicle, and routing, casing, and sorting mail. However, OWCP found that appellant had not submitted sufficient medical evidence to establish that the employee's death due to a cardiac condition on November 24, 2013 was employment related.

On April 28, 2016 appellant, through counsel, requested reconsideration of OWCP's April 11, 2016 decision. Counsel argued that an enclosed April 21, 2016 report of Dr. Thomas A. Diggs, a Board-certified cardiologist, was at least sufficient to require further development of the medical evidence regarding whether the employee's death on November 24, 2013 was related to employment factors.

In an April 21, 2016 report, Dr. Diggs indicated that he had reviewed the employee's medical records, as well as a general summary of his city carrier duties. He noted that the employee had a history of significant cardiac disease in addition to other serious medical problems, which included morbid obesity, hypertension, hyperlipidemia, chronic kidney disease, probable obstructive sleep apnea, asthma, and GERD. Dr. Diggs discussed the results of an April 26, 2012 echocardiogram and noted that, on May 8, 2012, Dr. Weisberg recommended a cardiac catheterization, but that it could not be successfully performed as the employee was unable to tolerate the procedure. He indicated that the decision was made to continue medical therapy at that time and to consider another attempt at an invasive cardiac catheterization in two to three months. The employee was seen again by Dr. Weisberg on October 1, 2012 and an echocardiogram revealed an improvement in his left ventricular function with an ejection fraction of 50 to 55 percent. Dr. Diggs indicated that the decision was made to continue medical therapy as the employee's clinical condition had improved. Despite the medical therapy, the employee developed coronary artery disease and died from an acute myocardial infarction on November 24, 2013.

In his April 21, 2016 report, Dr. Diggs further indicated that the employee's own letter from 2013 outlined his chronic pain, stress, and anxiety. He noted that the employee was not reassigned to a different job despite the strong recommendations of Dr. Morohunfola. Dr. Diggs asserted that chronic severe pain, emotional stress, and anxiety have been shown to cause coronary artery disease and exacerbate symptoms in patients who have preexisting coronary

artery disease. He indicated that the employee had chronic pain and noted that chronic pain leads to chronic anxiety and depression. Dr. Diggs noted that the metabolic syndrome which the employee had was also associated with chronic stress and anxiety. He indicated that psychological stress causes changes in the sympathetic-parasympathetic balance and the tone of the hypothalamic-pituitary-adrenal axis, which might accelerate the atherosclerotic process or precipitate myocardial infarction, left ventricular dysfunction, or dysrhythmia. Dr. Diggs noted that anxiety worsens prognosis in patients with coronary disease in a dose-dependent manner with a higher risk of death or nonfatal myocardial infarction in the 516 patients studied in an outpatient cardiology clinic over a five-year period. He noted that it was his opinion that there was an industrial cause to the employee's premature death from an acute myocardial infarction. Dr. Diggs indicated that the recurrent episodes of myocardial ischemia that the employee experienced performing his mail carrier duties, coupled with the chronic pain, and stress that he also suffered due to his work duties as a city carrier, contributed to his developing premature coronary artery disease, which precipitated his myocardial infarction and subsequent death.

In a July 6, 2016 decision, OWCP denied modification of its April 11, 2016 decision. It found that Dr. Diggs had not provided a rationalized medical opinion relating the employee's November 24, 2013 death to employment factors. OWCP noted that the evidence did not establish, as asserted by Dr. Diggs, that the employee had recurrent episodes of myocardial ischemia or chronic pain and stress related to his city carrier duties.

On July 15, 2016 counsel again requested reconsideration. He argued that Dr. Diggs' April 21, 2016 report was sufficiently well rationalized to establish that the employee sustained cardiac conditions due to employment factors, which in turn caused his death on November 24, 2013. Counsel also resubmitted several statements from 2012 and 2013 in which the employee discussed his work duties.

In a decision dated July 22, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that the evidence and argument she had submitted was repetitious.

LEGAL PRECEDENT -- ISSUE 1

The United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.⁷ An award of compensation in a survivor's claim may not be based on surmise, conjecture, or speculation or an appellant's belief that the employee's death was caused, precipitated, or aggravated by the employment.⁸ Appellant has the burden of proof to establish by the weight of the reliable, probative, and substantial medical evidence that the employee's death was causally related to an employment injury or to factors of his employment.⁹ This burden includes the necessity of furnishing rationalized medical opinion evidence of a cause and effect relationship, based on a

⁷ 5 U.S.C. § 8133(a).

⁸ See Sharon Yonak (*Nicholas Yonak*), 49 ECAB 250 (1997).

⁹ *L.R. (E.R.)*, 58 ECAB 369 (2007).

complete factual and medical background. The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.¹⁰ The mere showing that an employee was receiving compensation at the time of his or her death does not establish that his or her death was causally related to conditions resulting from the employment.¹¹

The medical evidence required to establish causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the employee's death and the accepted conditions or employment factors identified by the employee.¹²

ANALYSIS -- ISSUE 1

On August 4, 2014 appellant, widow of the deceased employee, filed a Form CA-5 claiming entitlement to survivor benefits. Regarding the nature of the injury which caused death, she alleged that the employee's job duties as a city carrier caused an acute myocardial infarction, which in turn caused his death on November 24, 2013. The November 27, 2013 death certificate listed the immediate causes of death as acute myocardial infarction, coronary artery disease, and hypercholesterolemia. The death certificate also identified hypertension and congestive heart failure as contributing conditions.

OWCP accepted that the employee's city carrier duties included delivering and collecting mail on foot or by vehicle, and routing, casing, and sorting mail. However, it found that appellant failed to submit sufficient medical evidence to establish that employment duties contributed to the development of the employee's heart disease, which led to his death on November 24, 2013.¹³

In a July 7, 2014 report, Dr. Morohunfola indicated that the employee became his patient around 1999 when he complained of back pain due to his work duties including lifting heavy loads, repetitive use of the upper extremities, twisting, climbing, and engaging in prolonged standing and walking. The employee also reported pain in his shoulders, elbows, and heels. Dr. Morohunfola noted that the conditions he diagnosed while the employee was under his care were degenerative joint disease of the back and shoulders, bulging discs, left sciatica, rotator cuff syndrome, and bilateral plantar fasciitis. He indicated that, in early 2012, the employee developed shortness of breath and was diagnosed with congestive heart failure and cardiomyopathy. Dr. Morohunfola noted that he wrote letters on the employee's behalf recommending that special accommodations be made for him at work, but the employee returned

¹⁰ *Id.*

¹¹ *Leonora A. Buco (Guido Buco)*, 36 ECAB 588, 594 (1985).

¹² *Donna L. Mims*, 53 ECAB 730 (2002).

¹³ *See S.L. (J.L.)*, Docket No. 15-0087 (issued April 15, 2015).

to the clinic on several occasions and reported that his work schedule remained very rigorous. He noted, “For these reasons, it is my medical opinion that the strenuous nature of [the employee’s] postal duties contributed to the worsening of his cardiac symptoms, his eventual acute heart attack, and resultant death in November 24, 2013.”

The Board notes that, while Dr. Morohunfola has provided an opinion that city carrier duties contributed to the employee’s death on November 24, 2013, he has not provided sufficient medical rationale in support of his opinion on causal relationship. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁴ Dr. Morohunfola failed to provide a sufficient medical explanation of how the described employment factors contributed to the employee’s death.¹⁵ He did not explain the medical process through which the employee’s preexisting cardiac condition could have been exacerbated by his specific work duties as a city carrier. Dr. Morohunfola only provided a general discussion of the employee’s work duties and of the nature of his cardiac condition. He did not explain why the employee’s death on November 24, 2013 was not entirely due to the natural progression of his multiple nonwork-related conditions.

Appellant also submitted an April 21, 2016 report in which Dr. Diggs indicated that he had reviewed the medical records of the employee and the general summary of the city carrier duties. Dr. Diggs noted that the employee had a history of significant cardiac disease in addition to other serious medical problems which included morbid obesity, hypertension, hyperlipidemia, chronic kidney disease, probable obstructive sleep apnea, asthma, and gastro-esophageal reflux disease. He discussed the medical treatment that the employee received for his cardiac problems. Dr. Diggs noted that it was his opinion that there was an industrial cause to the employee’s premature death from an acute myocardial infarction. He indicated that the recurrent episodes of myocardial ischemia that the employee experienced performing his mail carrier duties, coupled with the chronic pain and stress that he also suffered due to his work duties as a city carrier, contributed to his developing premature coronary artery disease, which precipitated his myocardial infarction and subsequent death.

The Board finds that Dr. Diggs’ April 21, 2016 report is of limited probative value because he did not provide sufficient explanation for his conclusion on causal relationship.¹⁶ The Board notes that Dr. Diggs did not adequately describe the medical process through which the employee’s work duties contributed to his ostensible recurrent episodes of myocardial ischemia and his reported chronic pain and stress. Importantly, Dr. Diggs did not adequately identify specific medical reports which indicated that the employee suffered recurrent episodes of myocardial ischemia, nor did he provide support for his suggestion that the employee developed an employment-related chronic pain/stress condition which contributed to the cardiac condition that led to his death on November 24, 2013.

¹⁴ *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹⁵ *See J.W. (F.W.)*, Docket No. 12-0778 (issued November 21, 2012).

¹⁶ *See Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994).

Dr. Diggs spent a good portion of his April 21, 2016 report discussing general findings from journals regarding the role of pain and stress in accelerating cardiac disease. For example, he asserted that chronic severe pain, emotional stress, and anxiety have been shown to cause coronary artery disease and exacerbate symptoms in patients who have preexisting coronary artery disease. Dr. Diggs indicated that anxiety worsens the prognosis in patients with coronary disease in a dose dependent manner with a higher risk of death or nonfatal myocardial infarction in the 516 patients studied in an outpatient cardiology clinic over a five-year period. In essence, he suggested that the employee sustained a chain of employment-related conditions starting with some type of pain/stress-related condition which in turn led to exacerbation of coronary artery disease and a myocardial infarction. Dr. Diggs' description of such a process is vague and lacks specific, detailed references to the medical evidence of record.¹⁷ The Board has held that medical texts and excerpts from publications are of little evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.¹⁸ Dr. Diggs did not adequately explain the specific medical process through which the employee's duties affected the cardiac condition that contributed to his death.¹⁹

For these reasons, the Board finds that appellant has not established that the employee's death on November 24, 2013 was related to work factors and OWCP properly denied her claim for survivor benefits.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,²⁰ OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and

¹⁷ The Board further notes that it has reviewed the medical evidence produced prior to the employee's death on November 24, 2013, including the reports of Dr. Weisberg, but that this evidence does not contain any opinion that the employee sustained an employment-related cardiac or pain/stress condition.

¹⁸ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

¹⁹ Dr. Diggs' recitation of general findings from journals suggests that he also felt that the employee developed an emotional condition related to a pain condition suffered as a result of his city carrier duties. However, he did not provide a clear opinion in this regard and the Board notes that no such condition was claimed by the employee prior to his death. On appeal, counsel argues that the April 21, 2016 report of Dr. Diggs is at least sufficient to require further development of the medical evidence regarding whether the employee's death on November 24, 2013 was related to employment factors. However, the Board has explained why Dr. Diggs' report is of limited probative value with respect to the main issue of the present case.

²⁰ Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

pertinent new evidence not previously considered by OWCP.²¹ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.²² When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.²³ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record²⁴ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²⁵ While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.²⁶

ANALYSIS -- ISSUE 2

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In her July 2015 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted, nor did she advance a new and relevant legal argument not previously considered by OWCP. Appellant's argument, made through counsel, was that Dr. Diggs' April 21, 2016 report was sufficiently well rationalized to establish that the employee sustained cardiac conditions due to employment factors, which in turn caused his death on November 24, 2013. However, she had previously presented this same argument through counsel and OWCP had already considered and rejected it. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.²⁷ A claimant may be entitled to a merit review by submitting relevant pertinent new evidence, but appellant did not submit any such evidence in this case.²⁸ Appellant also submitted several statements from 2012 and 2013 in which the employee discussed his work duties, but these statements were previously of record.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

²¹ 20 C.F.R. § 10.606(b)(3).

²² *Id.* at § 10.607(a).

²³ *Id.* at § 10.608(b).

²⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

²⁵ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²⁶ *John F. Critz*, 44 ECAB 788, 794 (1993).

²⁷ *See supra* note 24.

²⁸ *See supra* note 21.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the employee's death on November 24, 2013 was causally related to factors of his federal employment. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 22 and 6, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 3, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board